

ORIGINAL
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FCC MAIL SECTION
WIRELESS CABLE CONNECTION, INC.
10435 Greenbough, Ste 126***Stafford, TX 77477

JUN 11 11 03 AM '92

Response to:

) PR Docket No. 92-80

) RM 7909

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Proposed Rule Making

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JUN 11 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1. We at Wireless Cable Connection, Inc., (WCCI) an engineering and consulting firm, are dedicated to the development of the Wireless Cable industry. We applaud every effort by the Commission to encourage growth within the industry. We commend the Commission's efforts to speed the processing of pending applications for MDS service and to dispose of the backlog. Unfortunately, some of the proposed rule changes do not go far enough, others appear to be onerous, while the sentiments expressed in the last sentence of paragraph 29 represent a "throw out the baby with the bath water" approach to solving what appears to be mostly an unwieldy administrative procedure.

Paragraph 29," We solicit comment on all aspects of our proposals for the processing of pending and future MDS applications. We also ask commenters to set forth any alternative suggestions and all recommendations that in their view would prove more efficacious in terms of either easing the burden on applicants or the Commission, or in accomplishing the goals of this proceeding in general. In addition, we wish to underscore our cognizance of the fact that several of the proposals advanced in this proceeding represent significant departure from previous rules and practices governing the selection and operation of MDS licensees. As such, we propose to refund the application filing fees paid by any applicant who, in light of the changes proposed herein, requests dismissal of its application prior to the issuance of the public notice designating the application for random selection. In this same vein, we request commenters' views as to whether, in light of the complicated task before us in undertaking to process thousands of applications and conducting separate lotteries, it would simply be preferable to return all pending applications and establish a new window for acceptance of MDS applications."

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2. It would appear to us that administrative changes coupled with some selective rule changes are required. However, the pending applications have already been subjected to several rule changes which have created inequities. Caution dictates that additional changes to the rules do not generate confusion and more inequity, together with introducing additional delays to the stated goals of offering a competitive alternative video entertainment programming service to the public.

3. As a matter of simplification it would undoubtedly be of considerable benefit to consolidate the functions of processing applications and regulatory jurisdiction under one Bureau. Thereby eliminating duplication of effort. As there is frequency sharing between MDS and ITFS entities and because MDS has evolved into "Wireless Cable" providing entertainment to the general public these functions would best be served under the Mass Media Bureau. Albeit, whichever Bureau inherits this awesome responsibility of processing pending applications, changes should be initiated in administrative procedures to facilitate the task.

4. By the implications presented in paragraph 5 and footnote 32, the preponderance of pending applications is speculative. The consequences of this speculation have resulted in an inordinate number of filings. All of which require processing time by Commission staff. Therein lies the crux of the logjam situation. As stated in paragraph 12, "the disadvantage of the existing criteria is that their use is believed to slow processing because Commission engineers are required to evaluate each applicant's submissions".

Para 5: "Despite these measures, the competitive potential of wireless cable remains largely unrealized. To a substantial extent, this is because approximately 20,000 MDS applications, some dating back as far as the 1980 and 1983 filing periods, remain pending before the Commission. This large and aging backlog is the result of the interplay between our existing MDS processing rules and policies, the fact we have been unable to allocate sufficient resources to the processing of MDS applications, and a torrent of MDS filings, the majority of which are believed to be speculative. The impact of this backlog on the wireless cable industry has been devastating. Wireless cable operators have been unable to gain access to the number of channels necessary for them to meet subscriber demand and match competitors' offerings."

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5. It is common belief that application mills have inundated the Commission with "cookie cutter" applications. It is highly improbable to have large numbers of applications for the same service area submitted on the same day and not have some thread of commonality. It would make a significant impact upon processing efforts if all applications for the same service area were considered "en toto". Any applications carrying a common signature or verbatim engineering work could then be considered as a single application for the purpose of interference analysis examination.

6. For example it is not inconceivable that as many as one hundred (100) applications all submitting the same engineering data were filed for a single service area. Thus by identifying the "cookie cutter" applications one hundred applications could be processed as a single application. With a workload reduction of 100 to 1 the backlog of 20,000 applications could be reduced to 200. This ratio in all probability would not be valid for all of the pending service areas but, any multiple thereof should enhance the speed of processing.

7. Another source of multiple filings, as addressed in paragraph (17) dealing with the real party in interest provisions of the Rules, are the many efforts made to circumvent these Rules. Efforts that in most instances have

fn 32: "Our records make evident that speculative filings have delayed the provision of MDS service. First, numerous applicants selected for qualification review in an initial lottery have failed to perfect their applications, necessitating the initiation of new lottery proceedings. Furthermore, to date, more than 350 MDS construction permits or conditional licenses have been cancelled or forfeited for failure to construct. In addition, the sheer volume of speculative filings delays the licensing process and overburdens the Commission's resources."

Para 17, "As additional components of our efforts to streamline MDS regulations and processing procedures. We also are considering disallowing settlement agreements among MDS applicants, and prohibiting applicants from holding any type of interest, including serving as an officer, director, shareholder, trustee, beneficiary,

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been self-serving while skirting the edge of legality. The consequences of these efforts have been detrimental to the development of the Wireless Cable industry. Loading the lottery with multiple applications for the same market by using the names of husbands, wives, children, aunts, uncles, or other family members not only is unfair and contrary to the spirit of the Rules it borders on outright violation. Disallowing multiple applications for the same service area under these conditions will have a positive effect upon the quantity of applications submitted.

8. Proposed rule 21.901(d)(1) hints at this transgression but, does not specifically address this possibility. It should be necessary for applicants with a common name as well as any other type of implied interest (17) to demonstrate non common interest or be required to withdraw their application. Any pending applications which violate the intentions of this rule should be dismissed by the Commission if not withdrawn by the applicant.

9. It is further suggested as a means of reducing backlog the Commission should implement a "one-to-a-customer" policy. Many applicants neither have the intentions nor the means to build a system in every market in which they have already been granted. (fn32) Yet they have many pending applications and continue to file others. To preclude speculation and warehousing of frequencies by persons not actually interested in building a wireless system, grants and

owner, general or limited partner, or similiar position, in more than one application for the same channel or channels at sites within the same service area. Again, if these rule changes are adopted, pending applicants would be given an opportunity to bring their applications into compliance therewith. Our proposals with respect to partial settlements and interests in more than one application are consistant with those advanced in a Petition for Rule Making filed by the Wireless Cable Association, and are designed to deter the filing of speculative applications by restricting lottery entry to entities with a sincere interest in using MDS frequencies for their intended purposes."

Rule 21.901(d)(1) A Multipoint Distribution Service applicant may file only one application per station channel or channel group within one service area as determined in

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pending applications filed by the same applicant or party in interest should be limited to no more than ten different service areas. This can be accomplished by requiring withdrawal of any pending applications submitted by any applicant holding grants for channels or channel groups which exceed the prescribed limit. Paragraph 29, with regard to the refunding of the filing fee could apply in this instance.

10. Because it has been recognized that abuses are now evident regarding ITFS filings, this same rationale should be applied regarding excess capacity contracts between ITFS entities and potential MDS operators. No operator should be allowed to control more than a stipulated number of service areas by means of excess capacity contracts.

11. Spectrum warehousing is also being accomplished surreptitiously by some applicants receiving grants in multiple markets. They merely install transmitters and an antenna turn them on and file the completion certificate to save their license. The equipment is then turned off and no further activity takes place. This practice does nothing to enhance development of the wireless industry and should be discouraged by adoption of applicable rules.

12. In some cases, the equipment is removed entirely. In this instance Rule 21.44(a)(3) provides for the automatic forfeiture of the authorization. The Commission should encourage overfiling in any market where this subterfuge is taking place. Without the current licensee being given an

accordance with 21.902(e). The stockholders, the partners, the owners, the trustees, the beneficiaries, the officers, the directors, or any other person or entity holding any interest in one application for a particular channel or channel group in a particular service area, directly or indirectly, must not have any interest, directly or indirectly, in another application on the same channel or channel group within the same service area.

Section 21.44(a)(3) "A license shall be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein... (a maximum of 12 months from the date of the license grant)..."

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

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opportunity to correct the situation. The only right the current licensee should be entitled to would be to prove that there has been a viable operating system in place continually for a minimum of ninety (90) days prior to the overfile.

13. This procedure would not require Commission policing for verification of an operating system. Any individual with an interest in a potentially dormant license could monitor the channels and inspect the transmitter site assigned to the particular area. If no activity is detected and no equipment is in place over a period of thirty (30) days per sec 21.44 (a)(3) a new application can be filed. A letter of service must be sent to the current licensee for notification of the overfile. The service letter will require a response to the Commission within thirty (30) days. The response will require demonstration of proof that an operating system has been in place for ninety (90) days prior to the date of the letter. Without a timely response or reasonable proof from the licensee the new applicant will be granted a license.

14. WCCI is opposed to using distance as the primary criteria for eligibility for filing an application. As expressed by Commissioner Duggan, "all cities are not equally spaced 50 miles apart." Nor do all cities have flat topography. There are many instances where cities are less than fifty miles apart but, because of terrain obstructions no interference conditions would exist between them. Table 1 fails to answer terrain blockage conditions etc. Table 1 assumes flat earth and consistent line-of-sight. There are many existing MDS stations which do not meet this distance criteria. Therefore, proposed rule 21.901 (d)(6) is discriminatory. Additional wording should allow for exceptions in cases of terrain blockage. In lieu of meeting the conditions in Table 1 the applicant should be able to demonstrate no line-of-sight or non-interference to all of the authorized or previously applied for ITFS receive sites or the MDS station service area.

Proposed 21.901(d)(6) Applicants filing applications for frequencies in these bands may locate their Multipoint Distribution Service station transmitters less than 80 km (approximately 50 mi) from all authorized or previously applied-for cochannel ITFS or MDS station transmitters in the 2150-2162 or 2596-2680 MHz bands, if the applicant's proposed MDS station is cross-polarized, specifies equal EIRP, and the conditions described in Table 1 below are met.

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15. Proposed 21.902(b)(5) attempts to offer an exception to the mileage restrictions. Regardless of proposed rule 21.902(b)(5) this procedure is faulted with regard to other MDS stations. It has been our experience that this provision does not work. It is a sad commentary but, unfortunately the fact is, any place there is an opportunity for abuse there will be abuse. Unscrupulous operators will use every opportunity to bend the rules to their advantage.

16. This option for securing agreements is available under the Private Radio rules. As previously applied to OFS H channel service it was too easy for existing applicants or licensees to simply ignore requests for agreements to short-spacing. After the request was made they would apply for the channels in the subject area themselves in collusion with selected requestors. Thereupon giving each other a letter indicating no objections. There should be sufficient opportunity to file short-spacing assignments. It would be preferable to make interference analysis or line-of-sight a criteria in this instance.

17. The adoption of MSA designations created severe limitations which inhibit wireless cable development. (1988) Even when it can be demonstrated that the 1988 ruling is merely arbitrary and in many cases does not have merit, by the sheer number of pending applications, the Commission is limited against making any exceptions to this ruling by granting waivers. Many MSA areas are considerably large geographically. However, by the adoption of PN DA 88-562, only a single MDS system could be licensed within the MSA. This arbitrary application of the rules is grossly unfair and blatantly discriminatory by denying the right for everyone to receive service.

Proposed 21.902(d)(5) " As an alternative to satisfying the requirements set forth in subsections (b)(2) and (b)(4) of this section, an applicant for an MDS station may submit a statement from affected MDS or ITFS applicants, licensees or construction permittees stating that such licensees or construction permittees, or applicants do not object to operation of the proposed MDS station."

1988: Public Notice DA 88-562 released April 20, 1988.
"Applications filed must be for a location which is farther than 50 miles from any proposed location of MMDS applications pending on April 19, 1988 or MMDS licensed facility locations. These locations must be farther than 15 miles from the boundary of a statistical area for which there are MMDS applications pending on April 19, 1988."

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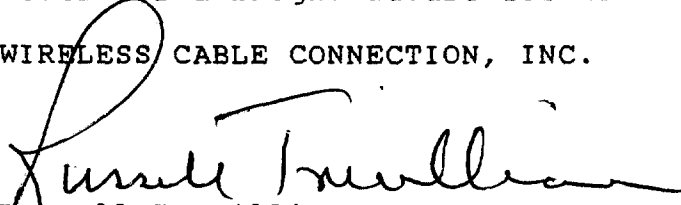
18. Modifications to the MSA ruling are in order but, WCCI is reluctant to suggest that an entire MSA be granted to a single operator because of afformentioned abuses. If the geography of an MSA will provide natural isolation for more than one system then multiple operators could coexist within the MSA. This same rationale should apply to providing service within overlapping MSA's. It may be prudent to allow service to an outlying area of one MSA be provided by an adjacent MSA which is geographically compatible.

19. Extreme caution is advised against adopting restrictive rules based upon assumptions that all situations fit the same mold. There should be sufficient latitude for interpretation and application under extenuating circumstances.

It is believed that incorporation of the aforementioned will facilitate processing of pending and future applications as well as enhance the development of the wireless industry.

Yours for a bright future for Wireless,

WIRELESS CABLE CONNECTION, INC.


Russell Trevillian
Vice-President